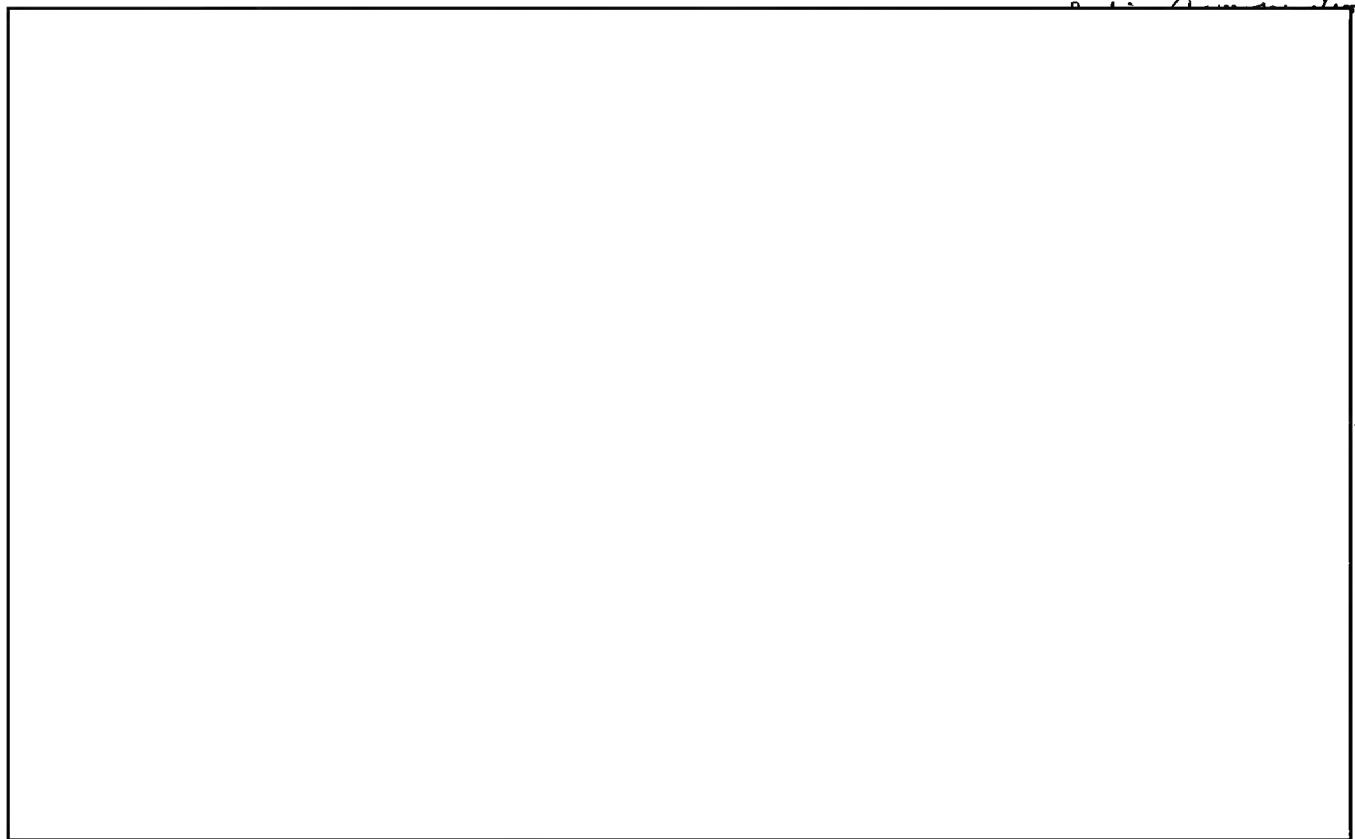


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STATINTL

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Washington, D.C. 20520

May 25, 1970

LEGAL AUTHORITY FOR FUNDING MILITARY OPERATIONS
IN CAMBODIA INVOLVING THAI PARTICIPATION

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General Authority

2. Department of Defense funds may be used to support foreign forces only to the extent specifically provided in DOD authorization and appropriation legislation. Present legislation provides:

Appropriations available to the Department of Defense during the current fiscal year shall be available for their stated purposes to support: (1) Vietnamese and other free world forces in Vietnam; (2) local forces in Laos and Thailand; and for related costs, on such terms and conditions as the Secretary of Defense may determine. (Military Procurement Authorization Act, 1970 (P.L. 91-121) sec. 401; Department of Defense Appropriations Act, 1970 (P.L. 91-171) sec. 638(a).)

3. Military assistance to Cambodia, in the form of furnishing defense articles and services to Cambodian forces, may now be financed out of MAP funds following the issuance of the

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Presidential Determination on May 21, establishing a MAP program for Cambodia in FY 1970 of \$7.9 million and waiving the usual requirements of the Foreign Assistance Act, such as a MAP agreement.

Transfer of Thai Equipment to Cambodia

4. The U.S. has supplied substantial amounts of military equipment to Thailand. Till FY 1968, these were provided through a regular MAP program. Since then, military assistance to Thailand has been financed out of service funds pursuant to the legislative authority quoted in para 2 above. Both MAP-funded equipment and service-funded equipment have been provided under the terms of the US-Thai Military Assistance Agreement of October 17, 1950 (TIAS 2434), which provides that the "Government of Thailand will not, without prior consent of the Government of the United States of America, devote assistance ... to purposes other than those for which it is furnished." (Article 2) The Thai Government therefore requires the consent of the USG to the transfer to Cambodia of any U.S.-supplied equipment. The Executive Branch may give consent to transfers of this sort without further approval from Congress. There is no statutory requirement that Congress even be notified of the consent to transfer, although there is such a requirement for consent to transfer under the military sales program. However, at the request of the Senate Foreign Relations Committee, the State Department has undertaken to report to Congress on all consents to transfer under the grant program as well, on a six-month basis. The next report would be made in September 1970.

5. Any U.S. replacement in Thailand of equipment that Thailand was transferring to Cambodia, should properly be charged to the MAP program for Cambodia. Service funds may not be used to support local forces in Cambodia. The use of service funds to enable or encourage Thailand to transfer equipment to Cambodia could be regarded in Congress as an illegal attempt to circumvent the restrictions on the use of service funds.

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10. U.S. funded expenses involved in the training of the Khmer forces to be integrated into the Cambodian army constitute the provision of a defense service to Cambodia and thus should be charged to the MAP program for Cambodia. Service funds may not be used to finance the training either of Thai forces destined for use in the defense of Cambodia or Khmers destined for integration into the Cambodian army.

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Continuing Support for Cambodian Forces

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13. A Supporting Assistance program, as authorized under the terms of sections 401-403 of the Foreign Assistance Act of 1961, as amended, could be utilized to provide budgetary support for Cambodia.

14. Section 401 of the Act limits the total number of countries eligible to receive supporting assistance to twelve, subject to waiver by the President. This quota has not yet been filled.

15. Under the Economic Assistance section of Title I of the Foreign Assistance and Related Programs Appropriation Act of 1970, there is a requirement that no part of the appropriation be used to initiate any Supporting Assistance project or activity which has not been justified to the Congress. A simple procedure is available whereby this justification could be accomplished. Alternatively, the President could waive this requirement under section 614 (a) of the Foreign Assistance Act of 1961, as amended, if he finds that provision of this assistance is "important to the security of the United States" and promptly reports this determination to Congress.

16. Under section 120 (a) of the Foreign Assistance and Related Programs Appropriation Act of 1970, the President must take into account, before furnishing supporting assistance to any country:

- 1) the percentage of the recipient or purchasing country's budget which is devoted to military purposes;
- 2) the degree to which the recipient or purchasing country is using its foreign exchange resources to acquire military equipment;
- 3) and the amount spent by the recipient or purchasing country for the purchase of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, from any country.

17. Under section 120 (b) of that statute, the President must report annually to the Congress his actions in carrying out this provision. This report is usually made sometime after the conclusion of the fiscal year.

Use of Defense Stocks

18. Under section 506 of the Foreign Assistance Act of 1961, the President may "if he determines it to be vital to the security of the United States, order defense articles from the stocks of the Department of Defense and defense services"

to be provided to MAP recipients beyond the amount appropriated for military assistance. The value of these orders may not exceed \$300,000,000 in any one fiscal year and they are to be subject to reimbursement from subsequent appropriations available for military assistance. Prompt notice of action taken under this authority must be provided to the Senate Committees on Foreign Relations, Appropriations and Armed Services and to the Speaker of the House.

19. The determination required for use of this authority --- "vital to the security of the United States" --- is the most stringent required under the Foreign Assistance Act. The authority provided in this section has reportedly been used only twice before, in FY '65 and '66, both times in relation to Viet-Nam, before MASF for Viet-Nam was instituted.

20. In each case, reimbursement was made by a special appropriation rather than out of regular MAP funds. If this section were to be used, the Congressional committees concerned would probably press for some timetable as to when reimbursement would be made.

21. It should be noted that this section does not authorize procurement of additional defense articles, but only the ordering of these already in defense stocks. Defense stocks may not contain articles of the particular sort required, such as small arms ammunition.

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ANNEX -- Use of Service Funds to Support Local or Foreign Forces in Cambodia

1. Any use of service funds to support local or foreign forces in Cambodia would have to come within the authority provided in DOD authorization and appropriation legislation. Present authority permits use of DOD funds to support:
 - (1) Vietnamese and other free world forces in Vietnam;
 - (2) local forces in Laos and Thailand; and for related costs, on such terms and conditions as the Secretary of Defense may determine.
2. An overly literal interpretation of "in Vietnam" and "in Laos and Thailand" would restrict U.S. support to Vietnamese, Lao and Thai troops to those that remain in their own countries. However, a more reasonable interpretation is supportable under which the use of DOD funds would be legitimate even when these forces went beyond the geographic boundaries of their countries. Under this interpretation the purpose of these out-of-country operations would have to be to deal with a direct and immediate threat to their own countries. South Vietnamese attacks on enemy sanctuaries along the Vietnam-Cambodian border come within this rationale. However, Thai or Vietnamese forces acting

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in defense of Cambodia would go beyond this rationale. U.S. support for such operations would amount to support for foreign forces in Cambodia. The only legislative provision for use of U.S. funds to support foreign forces in a third country is the authority to support "other free world forces in Vietnam."

3. "Related costs" -- The authority to use DOD funds for costs related to the support of Vietnamese and other free world forces in Vietnam and local forces in Laos and Thailand does not provide authority to use DOD funds to support local or foreign forces in Cambodia. DOD funds have been used under the concept of "related costs" to support non-U.S. forces in countries other than Vietnam, Laos and Thailand -- e.g., to fund equipment costs for engineer construction battalions in the Philippines and replacement combat units in Korea. These costs were related to the support of foreign forces (Philippines and Korea) in Vietnam in the sense that they were either a form of "quid pro quo" for the sending of Philippine and Korean units to Vietnam or out of country costs directly related to the deployment cycles of free world forces. In the case of the Korean units these additional costs were obliquely referred to in the appropriations hearings. (Hearings, House Committee on

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Appropriations, Supplemental Defense Appropriations for 1966 on H.R. 13546, pp. 27-28.)

4. Restrictions on the use of service funds would not be alleviated by placing Cambodian operations under the mantle of SEATO. Contributions to SEATO, including the provision of defense articles and defense services, can be made out of MAP funds. (Foreign Assistance Act of 1961, as amended, sec. 503.) There is no authority, however, to use Defense funds for other than SEATO military headquarters O and M budget purposes. U.S. support for foreign forces engaged in the O.A.S. peacekeeping operation in the Dominican Republic in 1965-66 were charged to a MAP program for the O.A.S.

5. Where Defense funds are unavailable for a particular activity there is no authority to borrow from these funds to finance the activity, even when there is an intention to pay back the funds from such legitimate sources as may later become available. If it is desired to use Defense funds to support local or foreign forces in Cambodia, an amendment to the existing Defense authorization and appropriation legislation should be sought. The amendment might

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add the following clause to the provision specifying what non-U.S. forces may be supported with Defense funds:

(3) Cambodian and other free world forces in Cambodia.

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Legal Authority for Indicated Sources (Summary)

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1. Cambodian MAP -- A military assistance program for Cambodia has been reinstated under the Foreign Assistance Act in the amount of \$7.9 million for FY 1970. Under this program "MAPEX equipment" -- surplus equipment in Vietnam and excess major and secondary end items from US stores -- may be made available to Cambodia at no charge to the MAP program other than for rehabilitation, packing, crating, handling and transportation.

2. MASF "interpretations" -- DOD funds are available for the support of non-U.S. forces under present service funding legislation only for "(1) Vietnamese and other

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although it would serve to help the Administration over a potentially difficult hurdle. Under this interpretation we would seek no amendment of the Defense Appropriations Act, which would lessen, but not eliminate, the rule of unhelpful and restrictive amendments on this legislation from the Congress. (DOD has not yet been consulted on this interpretation.)

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free world forces in Vietnam; (2) local forces in Laos and Thailand; and for related costs." It would be possible to approach the Armed Services and Appropriations Committees with a proposal that this language be interpreted, pending the adoption of more permissive language, to allow the expenditure of service funds in Vietnam and Thailand, or in behalf of Vietnamese and Thai forces outside of those countries, to support the defense of Vietnam, even though this goes beyond the original language and probably the original purpose of the legislation. The Administration would explain that Vietnamese forces have been supported through MASF in their activities in Cambodia against enemy sanctuaries and supply lines. The continued operations of ARVN, and possibly of Thai and Korean forces in Cambodia against the supply lines and sanctuaries would be funded from MASF on the same basis, i.e., that they were acting directly in support of the U.S.-Vietnamese-free world effort in South Vietnam. This thesis would be Thai participation closely to activities against the Communists in Eastern Cambodia. Agreement with the Armed Services and Appropriations Committees on this interpretation would not necessarily mean acquiescence on the part of the rest of the Congress,

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3. Supporting Assistance -- A budgetary assistance program to Cambodia could be instituted under S401 of the Foreign Assistance Act. The program would have to be justified to Congress; alternatively this requirement could be waived by the President and the waiver reported to Congress.

4. Third-country transfer -- Thailand and Viet-Nam may transfer to Cambodia, on such conditions as they may arrange, defense articles originally provided to Thailand and Viet-Nam by the United States under MAP or service funding (MASF) for use in Thailand and Viet-Nam. Such transfers are subject to U.S. consent. The giving of consent should be reported to Congress. Arrangements for replacement to enable or encourage Viet-Nam or Thailand to make these transfers would properly be charged to Cambodian MAP. In order to avoid these charges the USG should not go beyond indicating to Thailand and Viet-Nam that while it cannot undertake to provide replacement it would take into account their willingness to assist Cambodia in planning future military assistance to them.

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5. Section 506 -- The President may make available to Cambodia articles from existing defense stocks, subject to reimbursement from future MAP appropriations, if he finds that this is "vital to the security of the United States" and promptly reports his action to Congress. This authority has been used only twice before, both times in relation to Viet-Nam before MASF for Viet-Nam was instituted. Each time reimbursement was made by special appropriation.

6. Caveat -- The foregoing is subject to such action as the Congress may take with respect to the Cooper-Church amendment limiting the use of U.S. funds to support foreign forces in Cambodia.

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Text of Cooper-Church Amendment -- Sec. 47 of H.R. 15628,
an Act to Amend the Foreign Military Sales Act

(Reported by the SFRC on May 12, 1970 with new
prefatory language submitted by the sponsors
on May 21, 1970.)

Sec. 47. Limitations on United States Involvement
in Cambodia. -- In concert with the declared objectives
of the President of the United States to avoid the involve-
ment of the United States in Cambodia after July 1, 1970,
and to expedite the withdrawal of American forces from
Cambodia, it is hereby provided that unless specifically
authorized by law hereafter enacted, no funds authorized
or appropriated pursuant to this Act or any other law may
be expended after July 1, 1970 for the purposes of -- ...

"(1) retaining United States forces in Cambodia;
"(2) paying the compensation or allowances of, or
otherwise supporting, directly or indirectly, any
United States personnel in Cambodia who furnish
military instruction to Cambodian forces or engage
in any combat activity in support of Cambodian forces;

"(3) entering into or carrying out any contract or agreement to provide military instruction in Cambodia, or to provide persons to engage in any combat activity in support of Cambodian forces; or
"(4) conducting any combat activity in the air above Cambodia in support of Cambodian forces."

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be those available for support of Cambodian, as opposed to "Thai" forces. These would be supporting assistance for pay and allowances and Cambodian MAP for replacement arms and equipment.